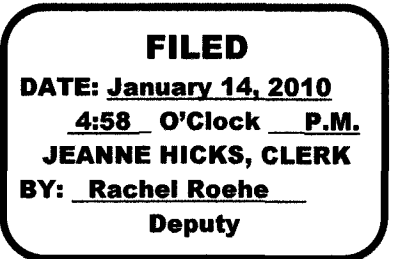


w/o

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION: 6

JEANNE HICKS, CLERK

HON. THOMAS B. LINDBERG

By: Rachel Roehe, Deputy Clerk

CASE NO. P1300CR20081339

DATE: January 14, 2010

TITLE:

COUNSEL:

STATE OF ARIZONA
(Plaintiff)

vs.

Yavapai County Attorney
(For Plaintiff)

STEVEN CARROLL DEMOCKER
(D-1)

John Sears
107 North Cortez Street, Suite 104
Prescott, AZ 86301

Larry Hammond
Anne Chapman
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, AZ 85012
(For Defendant)

HEARING ON:
Oral Argument Re: Pending Motions

NATURE OF PROCEEDINGS

COURT REPORTER
Lisa Chaney

START TIME: 9:50 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney
Steven DeMocker, Defendant
John Sears, Counsel for Defendant
Larry Hammond, Counsel for Defendant
Anne Chapman, Counsel for Defendant

Court convenes in chambers with the presence of Counsel. Michael Terribile, Counsel for Barbara Onan, is also present telephonically. The Defendant's presence is waived.

Motion to Quash Subpoena:

Counsel argue the motion.

IT IS ORDERED granting the motion and quashing the Subpoena at this time. The order is signed this date.

~*~*~*~*~ Recess – 9:55 a.m. ~*~*~*~*~

At 10:50 a.m., Court reconvenes in chambers with the presence of Counsel and Defendant.

Motion in Limine to Preclude Prior Act Evidence Pursuant to Rule 404(b):

Counsel argue the motion, specifically the portions numbered 1, 9 and 11.

With regard to number 9 of the motion, the Court makes a preliminary finding that there is not evidence to support it and that the prejudice outweighs the probative value. The Court precludes discussing this in Court and its use in trial.

With regard to number 11 of the motion, the Court does not believe that there is any evidence that this has been proven.

The Court **ORDERS** that the record of today's in chambers proceedings shall be sealed from the public.

~*~*~*~*~* Recess – 11:30 a.m. ~*~*~*~*~*

At 11:32 a.m., Court reconvenes with the presence of Counsel and the Defendant.

Motion in Limine to Preclude the Testimony and Report of Richard Echols and All Testimony Relevant to F(12) Aggravator:

Counsel argue the motion.

The Court limits Mr. Echols' testimony with regard to counting, auditing and fraud examination. The Court does not believe that the witness's testimony is totally irrelevant as a result of the Court striking the F12 aggravator. The Court believes that because motive may be relevant in a homicide case, then financial condition that bears upon that motive that may establish some kind of financial or pecuniary motive is still legitimately admissible. The State has indicated that it will not try to seek to admit the report that was filed.

The Court **ORDERS** that the State provide the Bates numbers of the materials by the end of next week.

The Court **grants** the motion in part and **denies** the motion in part. The Court will not bar the State from using Mr. Echols or other qualified financial expert satisfactorily disclosed. A qualified forensic accountant may be used as part of the case in attempt to establish some financial motive, but he is not allowed to testify concerning things outside of the financial area of expertise, particularly to attribute motive to try to ascertain what Ms. Kennedy or Mr. Democker may have been thinking. The Court directs the State to caution the witness that he is to remain within his field of expertise upon penalty of contempt of Court if he does not.

Court and Counsel discuss scheduling and other pending issues.

~*~*~*~*~* Recess – 12:03 p.m. ~*~*~*~*~*

At 1:33 p.m., Court reconvenes with the presence of Counsel and the Defendant.

Motion in Limine to Exclude Police Officers from Testifying as Experts:

Counsel argue the motion.

Counsel inform the Court regarding their areas of agreement with regard to this motion.

Without prior disclosure and hearing outside of the presence of the Jury, the Court does not believe that Mr. Page will be able to testify with regard to forensic examination.

With regard to Detective McDormett, the Court finds that he is not an expert with regard to blood spatter or with regard to reconstruction of crime scenes. Descriptions of what were observed are admissible under 701. To the extent that the motion is requesting that he not describe what he saw in terms of direction of blood droplets and that they were different than the angle of the bookcase at the time, the Court will not preclude him from talking about those observations and the conclusion there from that the body may have been repositioned or the

scene had been changed in some fashion from when it occurred. The Court believes it is legitimately allowed under *Amaruiz* and the other cases under 701.

With regard to the bicycle track comparisons, the Court will preclude the use of terms that add the level of certainty such as "match" or "identical", except through an expert. The court will allow the officer to testify about the observations and similarities observed.

With regard to the shoe print comparisons, the Court notes that the issues in the argument presented depend on qualifying Theresa Kennedy as an expert.

The Court requests that the State caution Sergeant Winslow with regard to the use of certain terminology in his testimony.

Motion to Dismiss or in the Alternative for a *Willits* Instruction:

Counsel argue the motion.

The Court defers ruling on this issue for the time being.

~*~*~*~*~ Recess – 3:17 p.m. ~*~*~*~*~

At 3:39 p.m., Court reconvenes with the presence of Counsel and the Defendant. Deputy County Attorney Jack Fields, Commander John Russell and Captain Jaime Cicero are also present.

Modification of Release Conditions:

Discussion takes place regarding modification of release conditions and the order entered yesterday regarding YCSO.

The Court believes that a hearing is appropriate as to this issue and that the burden is on the Defense with regard to the Sixth Amendment Rights issue. **Hearing regarding this issue is set for January 22, 2010, at 9:00 a.m.**

The Court vacates the portion of its previous order requiring forthwith compliance by YCSO.

The Court states that it would appreciate any briefing on this issue by Thursday morning, January 21, 2010.

~*~*~*~*~ Recess – 3:57 p.m. ~*~*~*~*~

At 4:07 p.m., Court reconvenes with the presence of Counsel and the Defendant.

Motion to Dismiss or in the Alternative for a *Willits* Instruction:

With regard to the shoe prints and possibly the bike prints, a *Willits* instruction would appear at this time to the Court to be appropriate. The Court reserves the right to modify that ruling based upon the evidence presented in Court.

Motion in Limine to Preclude Prior Act Evidence Pursuant to Rule 404(b):

Counsel argue the motion.

The Court will allow the State to rely upon evidence that has already been admitted as long as that evidence comes from Chronic Hearings and Simpson Hearings at which the Defendant was present and had the opportunity for cross-examination through defense counsel.

Counsel argue topics numbered 3, 4, and 5 of the motion. The remaining 404(b) issues will be discussed tomorrow.

END TIME: 4:58 p.m.

cc: VS (e)
Dean Trebesch (Contract Administrator) (PD) (e)
Division 6 (calendar)
YCSO (e)
Christopher DuPont, Trautman DuPont PLC, 245 W Roosevelt, Ste. A Phoenix, AZ 85003,
Counsel for Victims Charlotte and Katherine DeMocker